

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Accelerating Wireline Broadband	)	WC Docket No. 17-84
Deployment by Removing Barriers	)	
to Infrastructure Investment	)	

To the Commission:

**COMMENTS OF ILLINOIS ELECTRIC COOPERATIVE**

**I. INTRODUCTION**

Illinois Electric Cooperative (“IEC”) hereby submits these comments in response to the Federal Communications Commission’s (“FCC”) Report and Order, Declaratory Ruling, And Further Notice of Proposed Rulemaking, adopted November 16, 2017, and released November 29, 2017, concerning the acceleration of wireline broadband deployment. Specifically, IEC responds to the questions put forth by the FCC regarding its preemption authority. As a reminder, underlying the concerns expressed in IEC’s comments dated June 9, 2017 in this docket is the fact that areas of its service territory are devoid of any public right-of-way (“ROW”) upon which it could construct a fiber network.<sup>1</sup>

**II. IEC BACKGROUND**

IEC was organized in May of 1936 as Illinois Rural Electric Company to provide electric service to rural areas. The first electric lines in IEC’s territory were energized in

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<sup>1</sup> Reply Comments of Illinois Electric Cooperative July 17, 2017 at 2-4, FCC Docket WC-17-84 Notice of Proposed of Rulemaking, Notice of Inquiry, and Request for Comment, adopted April 20, 2017, released April 21, 2017, at 3-4.

1938. IEC's headquarters is centrally located in the heart of its service territory in Winchester, Illinois, serving members in the Illinois counties of Morgan, Pike, Scott, Greene, and Calhoun, with a few members located in the adjacent counties of Adams, Brown, Cass, Jersey, and Macoupin. IEC supplies electricity and provides internet service to over 14,000 accounts, one-third of which are internet accounts. IEC is registered with the Illinois Commerce Commission ("ICC") to provide interconnected Voice over Internet Protocol ("VoIP") service and successfully completed a key ICC Digital Divide Elimination Infrastructure Fund project.<sup>2</sup> Additionally, IEC holds certification as an Illinois local and interexchange telecommunications carrier,<sup>3</sup> statewide authorization to provide cable and video service,<sup>4</sup> and an FCC license to construct and operate cellular radio towers in Illinois.<sup>5</sup> IEC participated in the preliminary stages of the FCC's Broadband Experiment and carries designation as an Eligible Telecommunications Carrier ("ETC").<sup>6</sup>

IEC has substantial experience in building, maintaining, and upgrading utility infrastructure. Its investments in internet and electric facilities range between \$6 and \$8 million annually. Accordingly, IEC is fully able to manage, build, maintain, and repair infrastructure for the next generation of telecommunications services. IEC offers phone service and internet over its own fiber-to-the-premises networks in small areas of its service territory.<sup>7</sup> IEC also offers fixed wireless internet service over its broadband

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<sup>2</sup> ICC Docket No. 06-0187, Order entered September 19, 2006.

<sup>3</sup> ICC Docket No. 15-0529, Order entered December 9, 2015.

<sup>4</sup> ICC Docket No. 15-0170, Notice issued March 26, 2015.

<sup>5</sup> FCC FRN #000482189. IEC federal registration to construct and operate cellular radio towers.

<sup>6</sup> ICC Docket No. 16-0191, Order entered March 22, 2017.

<sup>7</sup> IEC provides services through its "own" network facilities as defined pursuant to the *First Report and Order* (FCC 97-157, CC Docket No. 96-45) ¶ 159.

wireless network. Its fixed wireless infrastructure provides internet service from over 80 structures at speeds of up to 35 megabits per second.

IEC has a proven track record of providing high-speed broadband and affordable internet access to the communities it serves. Further, IEC seeks to continue, on a not-for-profit cooperative basis, its investments in such infrastructure and provide the opportunity for all stakeholders in its communities to benefit from such investments. IEC also believes that if it did not provide broadband internet service, it simply would not be available in many parts of its service territory.

### **III. IMPORTANCE OF REMOVING REGULATORY BARRIERS**

IEC agrees with the FCC that access to high-speed broadband is an essential component of modern life, providing access to information and entertainment, an open channel of communication to far-away friends and relatives, and unprecedented economic opportunity.<sup>8</sup> IEC also agrees that: 1) too many communities remain on the wrong side of the digital divide, 2) the FCC should use every tool available to it accelerate the deployment of advanced communications networks, 3) removing unnecessary impediments to broadband deployment reduces the costs to deploy high-speed broadband networks, and 4) reducing such costs will make it more economically feasible for carriers to extend the reach of their networks.<sup>9</sup>

IEC is encouraged by the FCC's pledge for additional action in the future in this proceeding to further facilitate broadband deployment. More specifically, IEC supports

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<sup>8</sup> FCC Docket 17-84 Report And Order, Declaratory Ruling, And Further Notice Of Proposed Rulemaking Adopted November 16, 2017, Released November 29, 2017, at 2, ¶ 1.

<sup>9</sup> Id. at 2-3, ¶ 2-3.

the Commission's use of its preemption authority to prevent the enforcement of state and local laws that inhibit broadband deployment.<sup>10</sup>

#### **IV. THE FCC'S QUESTIONS PERTAINING TO REMOVAL OF REGULATORY BARRIERS**

Most recently in this proceeding, the FCC's focus has shifted toward use of its preemption authority to remove barriers within the window of recovery from natural disasters.<sup>11</sup> While IEC agrees that this emphasis could be useful, it presents a very narrow use of the preemption authority which unfortunately disregards concerns over a potentially larger impediment to universal broadband deployment. The longstanding issue facing local communities continues to be regulations and laws that present a substantial ongoing barrier to deployment of advanced broadband infrastructure. Whether hundreds of electric and telephone poles are destroyed by a high-intensity tornado, or these same poles are visited with an incongruous prohibition from carrying broadband, the end result is *exactly the same* to impacted communities – lack of adequate access to broadband. Accordingly, in answering the following FCC questions, IEC shares the FCC's goal of removing barriers created by state and local laws, regardless of the particular circumstances under which these barriers arise.

##### **A. How can the FCC ensure that any preemptive action it takes helps rather than inhibits state and local efforts?**<sup>12</sup>

Consistent with the emphasis on the importance of working cooperatively with state and local authorities, IEC has extensive successful experience working in

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<sup>10</sup> Id. at 3 ¶ 4.

<sup>11</sup> Id. at 67-68, Without comment or other cited input, the FCC refocused the context of preemption in this docket to “**Rebuilding and Repairing Broadband Infrastructure After Natural Disasters**”. The FCC's earlier request for comment regarding preemption did not appear limited to or focused on the area of disaster recovery.

<sup>12</sup> Id. at 68 ¶ 179

cooperation with state and local authorities and officials. Specific to the barrier caused by a lack of ROW for advanced broadband in certain rural areas of Illinois, IEC has been a leader in public education and outreach through its coordination with, and support from, state and local authorities and officials.

At the state level, IEC has established a record as a reliable partner by successfully completing state broadband deployment projects and receiving certificate authority to provide telecommunications, cable, and video state-wide.<sup>13</sup> At present time, the Illinois Commerce Commission has conditionally granted IEC ETC designation. IEC plans to use its ETC designation to facilitate the deployment of an advanced deep fiber network within its ETC service area.<sup>14</sup>

At the county and local level, IEC has done extensive outreach through informational videos, printed news, and in-person meetings. Through its interactions, IEC has been able to confirm the following:

- Local residents, while unfamiliar with the problematic county ROW regime, are often frustrated by the apparent lack of common sense when they observe existing electric utility poles upon which fiber could easily be added.
- The President of the Village of Hardin, which is the county seat of Calhoun County, IL, has shared that he and the Village leaders are in full support of IEC's efforts to bring deep fiber infrastructure to Calhoun County. The President further indicated that he understands how this could greatly improve the quality of life in the County, but recognizes the major obstacle to overcome is barriers associated with ROW,

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<sup>13</sup> See Comments of Illinois Electric Cooperative June 9, 2017, at 2, FCC Docket WC-17-84 Notice of Proposed of Rulemaking, Notice of Inquiry, and Request for Comment adopted April 20, 2017 released April 21, 2017.

<sup>14</sup> ICC Docket 16-0191.

or more specifically the lack of ROW outside of municipalities. IEC has found that the President's perspective is mirrored by local officials in the community who lament the current ROW situation but don't know what they can do about it

- Local and regional economic development officials witness the economic encumbrances due to lack of modern broadband infrastructure in Calhoun County, Illinois. The litany of common encumbrances reported by local and regional economic development officials include problems with credit card transactions, marketing and promotion, and home-based business data transmission.
- Across all barrier issues, both community leaders and residents find it remarkable that a St. Louis Metro County lacks essential fiber infrastructure.
- Public safety, schools, and health care suffer from lack of modern broadband infrastructure in Calhoun County, Illinois. The Calhoun County Sheriff and the County Board Chairman have both indicated that access to reliable broadband would improve the quality and reliability of public safety communication networks for the County.
- Local health care providers in Calhoun County lack reliable broadband that could allow them to offer new and improved care through telehealth and telemedicine offerings.
- Local schools in Calhoun County require fast and reliable broadband in order to incorporate more web based learning initiatives in school through smart boards

and iPads. Adequate residential service could help ensure that students would be able to access the web at home for homework and research purposes.<sup>15</sup>

IEC has proven through experience that full engagement and transparency with state and local authorities and officials earns support and facilitates coordination of efforts to date. In the case of lack of ROW, the FCC can ensure any preemptive action it takes helps rather than inhibits state and local efforts by recognizing first the direct conflicts and contradictions between ROW (or the lack thereof) and state and national broadband policy and second engagement with state and local officials, providers, and community stakeholders in taking preemptive action.

As explained in greater detail in IEC's June 9, 2017 Comments,<sup>16</sup> the complete lack of ROW in certain rural areas like Calhoun County, Illinois poses a significant hurdle to high-speed broadband deployment. Briefly, although there is no public ROW for IEC to use, electric utility poles exist on private property in the area from which IEC could easily hang fiber for the purpose of providing broadband service. Unfortunately, the easements permitting the electric utility poles do not provide for telecommunications uses. Therefore, IEC is compelled to obtain a telecommunications easement by negotiation or condemnation on each parcel simply to hang an additional fiber cable on the existing poles. Doing so is costly, cumbersome, and time consuming – which runs the risk for any carrier in IEC's position of killing a fiber buildout project.

To help overcome significant aspects of this obstacle, IEC again urges the FCC to consider using its preemption authority by establishing the compensation to be paid for

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<sup>15</sup> Reply Comments of Illinois Electric Cooperative July 17, 2017 at 2-4, FCC Docket WC-17-84 Notice of Proposed of Rulemaking, Notice of Inquiry, and Request for Comment, adopted April 20, 2017, released April 21, 2017, at 3-4.

<sup>16</sup> Comments of Illinois Electric Cooperative June 9, 2017, at 5-9, FCC Docket WC-17-84 Notice of Proposed of Rulemaking, Notice of Inquiry, and Request for Comment adopted April 20, 2017 released April 21, 2017.

such easements. IEC's proposed solution recognizes landowners' property interests and right to compensation while balancing the limited additional burden created by the new easements in the types of situation IEC faces. By way of background, IEC observes that 47 U.S.C. 542 provides that cable operator annual franchise fees shall not exceed 5% of the operator's gross revenue in a 12-month period. IEC proposes that the FCC consider imposing in condemnation proceedings an analogous cap on the value of easements that only permit the installation/attachment of fiber and other broadband enabling facilities on existing utility poles. (This valuation would be independent and apart from the FCC's pole attachment rules pertaining to the relationship between the attacher and the utility owning the pole.) Uncertainty would be overcome, and the likelihood of a successful broadband deployment significantly increases. Entities deploying broadband would also not have to rely on offering a fiber service drop without charge to compensate landowners for providing an easement.

Furthermore, by knowing the maximum potential compensation ahead of time based on FCC rules, a telecommunications carrier in IEC's position and landowners facing the simple addition of a fiber cable to existing poles could essentially eliminate the need for an actual condemnation proceeding in court. In other words, as long as the carrier has the authority to condemn such a limited easement under state law for the public purpose of deploying broadband, the primary issue to be resolved by a trial court would be the compensation to be paid for the easement. If, for example, the value is set at a percentage of some amount (such as annual revenue), the amount to pay for any particular easement will be the product of a simple formula that can be agreed to by the carrier and landowner without the involvement of a court.



Admittedly, questions of land access and land restoration could still be raised by a landowner. But given the circumstances contemplated by IEC (i.e.: the electric easement and poles already exist), access paths should already be established and land disturbance will be minimal. The FCC could conceivably condition use of the proposed easement valuation methodology on the carrier committing in an easement agreement to restoring land to the condition it was found in.

To be clear, IEC does not suggest that a cap for easements facilitating broadband deployment is appropriate in all instances. Clearly it may be necessary in some situations to acquire an easement on a parcel previously untouched by a utility easement. In such situations, the condemnation of an easement for broadband deployment will involve the installation of new poles and/or boring of conduit. This represents a more significant burden on landowners than simply adding a cable to existing poles and warrants further consideration of the impact on each parcel.

In furtherance of working with state and local efforts to deploy broadband, the FCC could also condition the preemption proposed by IEC on the carrier obtaining the official support of the county board or other relevant governing body. For example, a county board could adopt a resolution expressing support for the exercising of the FCC preemption. Such a requirement would ensure local support for FCC preemption to facilitate a broadband deployment project which may need eminent domain for the de minimus imposition of adding a fiber cable on existing poles.

**B. If the FCC should preempt certain state or local laws, should it do so by rule or by adjudication?** <sup>17</sup>

IEC understands that in the past the FCC has exercised preemption in an adjudication setting. Under IEC's proposal for preemption, however, IEC believes that the circumstances that warrant preemption are sufficiently narrow to lend themselves to a rulemaking. Moreover, the use of adjudication under such circumstances does not provide the certainty that IEC's proposal is designed to provide.

Regardless of the specific total compensation cap determined, how it is allocated among affected landowners will need to be determined via rule in order maximize the benefit of any such methodology. In other words, there is more than one way to allocate the aggregate amount among landowners whose property is crossed by an easement for additional fiber on existing poles. Without a defined way to allocate the total available compensation, landowners may still argue for a larger portion of the total compensation amount, which may still lead the parties to court in a condemnation action. A rule would provide certainty on this question at the outset of a broadband deployment project whereas the adjudication process provides certainty only in the midst of or near the end of a project.

IEC freely acknowledges that its proposal to cap compensation based on an FCC rule and formula will not solve all of the problems that IEC has encountered in its own rural broadband deployment project. Specifically, knowing the amount of compensation for an easement on a particular parcel will not remedy a situation when a landowner simply refuses to respond to requests for an easement. In that situation, the

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<sup>17</sup> Id. at 68 ¶ 179

telecommunications carrier will still likely need to go to court to condemn an easement so that it may hang fiber on existing poles. The existence of the type of rule proposed by IEC, however, would undoubtedly facilitate, if not expedite, the condemnation action by providing answers to some of the most significant questions addressed in a condemnation action.

**C. Should the FCC limit the scope of any preemption in this context only to periods in which a community is recovering from a natural disaster, and if so how should it delimit that timeframe?"<sup>18</sup>**

IEC's experience clearly indicates that the FCC should *not* limit the scope of any preemption to periods of recovery following a natural disaster. Whether confronting a natural disaster or man-made obstruction, the FCC should not abandon its objective of accelerating wireline broadband deployment by removing barriers to infrastructure investment. In addition, the FCC should not limit its ability to address the "digital divide" and should continue its efforts to improve broadband accessibility.<sup>19</sup>

**V. CONCLUSION**

IEC respectfully reaffirms its request that the FCC consider using preemption. While IEC's comments herein have advanced beyond the most recent focus on preemption in the natural disaster setting, the discussion of IEC's proposal was necessary in order to fully respond to the last question posed by the FCC (see Section III.C. above). Such preemption should be applied to remove the service delays and uncertainty regarding the value that state jurisdictions may assign to nominal impact easements (e.g., an easement allowing fiber to be hung from existing utility poles.) (IEC Comments at 10) By removing such barriers, the FCC would take an important step in accelerating wireline

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<sup>18</sup> Id. at 68 ¶ 179.

<sup>19</sup> Id. at 1-3.

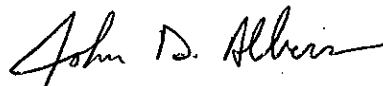
broadband infrastructure deployment. IEC respectfully submits that adoption of its proposal will have a greater impact on broadband deployment than the narrow (and unexpected) focus of preemption during natural disaster recovery.

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Respectfully Submitted,



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